APPENDIX A

Judgment of the Circuit Court of Mercer County, West Virginia and Notice from the Clerk of the Supreme Court of Appeals of West Virginia

IN THE CIRCUIT COURT OF MERCER COUNTY
WEST VIRGINIA

CARL STILL, *Plaintiff* — TRESPASS ON THE CASE

v. — Case No.5734

NORFOLK AND WESTERN RAILWAY COMPANY, a Corporation, *Defendant*

Order

This the 5th day of October, 1959, came the parties by their attorneys , and both sides announced ready for trial.

Thereupon, the defendant for plea in its behalf says that it is not guilty in manner and form as alleged in the plaintiff's Amended Declaration filed herein, and of this it puts itself upon the country, and the plaintiff doth the like, and issue is thereon joined.

Thereupon, the defendant tendered and asked leave to file its special plea in writing, entitled Defendant's Special Plea No. 1, to the filing of which Plea the plaintiff objected and assigned his reasons for his objections to the filing of said Plea in the record, but the Court overruled said objections of the plaintiff and ordered the said Plea to be filed, to which action and ruling of the Court in permitting and allowing the defendant to file Defendant's Special Plea No. 1, the plaintiff at the time objected and excepted.

Thereupon, the plaintiff, Carl Still, tendered to the Court and asked leave to file his written Demurrer to said Defendant's Special Plea No. 1, in which Demurrer the defendant joined, and the Court, after hearing argument upon said

Demurrer, is of opinion to and doth overrule plaintiff's Demurrer to Defendant's Special Plea No. 1, to which action and ruling of the Court in overruling plaintiff's Demurrer to Defendant's Special Plea No. 1, plaintiff at the time objected and excepted.

Thereupon came a jury, to-wit, James E. Thomas and eleven other good and lawful men and women, who were duly selected, impaneled and sworn to well and truly try the matter in issue between the plaintiff and the defendant, and a true verdict render according to the evidence.

Thereupon, the plaintiff and the defendant introduced their evidence before the jury and rested their respective cases, and upon the conclusion of said evidence defendant asked leave of the Court to amend its Special Plea No. 1, and tendered and asked leave to file Defendant's Amended Special Plea No. 1, to the filing of which Amended Special Plea No. 1, the plaintiff at the time objected, and assigned his reasons for his objections to the filing of said Amended Special Plea No. 1 in the record, but the Court overruled plaintiff's said objections and ordered said Defendant's Amended Special Plea No. 1 to be filed, to which action and ruling of the Court in permitting and allowing defendant to file its Amended Special Plea No. 1, the plaintiff objected and excepted.

Thereupon, the plaintiff tendered to the Court and asked leave to file his written Demurrer to Defendant's Amended Special Plea No. 1, in which Demurrer the defendant joined, and the Court, after hearing argument upon said Demurrer, is of opinion to and doth overrule said Demurrer to Defendant's Amended Special Plea No. 1, to which action and ruling of the Court in overruling said Demurrer, the plaintiff at the time objected and excepted.

Thereupon, both plaintiff and defendant having introduced their evidence and rested their respective cases, the defendant moved the Court to direct the jury to find a

verdict in favor of the defendant, on the ground and for the reason that plaintiff, Carl Still, in his written application to defendant for employment in July 1951, and in his answers to certain questions propounded to him by Dr. Harold E. Troup, defendant's medical examiner, at the time of plaintiff's examination, had made false and fraudulent answers with respect to his Army service, his medical discharge from the Army, his previous employment, his previous accidents, his physical condition, his past illnesses, and other important and material matters which should have been disclosed to defendant at the time of plaintiff's employment, and that by reason of said false and fraudulent answers to said questions appearing in said application for employment, and said questions propounded to plaintiff by defendant's medical examiner, that plaintiff had fraudulently procured employment as a yard brakeman with defendant, which motion was resisted by plaintiff.

Thereupon said motion, being argued by counsel and considered by the Court, was sustained, and the Court, for reasons set forth in its opinion dictated to the court reporter at the time of passing on said motion, directed the jury to find a verdict in favor of the defendant.

Thereupon, pursuant to the Court's direction, the jury returned the following verdict:

> "We the jury at the direction of the Court, agree and find for the defendant.
>
> James E. Thomas
> Foreman"

whereupon the jury was discharged.

Thereupon, the plaintiff moved the Court to set aside the jury's verdict and award to the plaintiff a new trial, on the ground and for the reason that the evidence introduced on behalf of the plaintiff was sufficient to justify the jury in finding a verdict in favor of the plaintiff, which motion was resisted by the defendant and was overruled by the

Court, to which action and ruling of the Court the plaintiff at the time objected and excepted.

And now proceeding to render judgment on said jury's verdict, it is considered by the Court that the plaintiff take nothing by his action against the defendant herein, and that judgment be and the same is hereby rendered against the plaintiff, and in favor of the defendant, and it is further considered that the defendant shall have and recover of and from the plaintiff its costs incurred in and about the defense of this action, including a statutory attorney's fee of $10.00.

On motion of plaintiff, execution on the foregoing judgment is suspended for a period of sixty days in order to give the plaintiff an opportunity to apply to the Supreme Court of Appeals of West Virginia for a writ of error and supersedeas to the judgment hereby rendered.

Enter:

F. Warton Wagner
Judge

State of West Virginia

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on the 12th day of September, 1960, the following order was made and entered, to-wit:

Carl Still — Trespass on the Case

v. — Case No. 5734

Norfolk and Western Railway Company, a Corporation

On a former day, to-wit, June 7, 1960, came the petitioner, Carl Still, by Burton, Griffith, Burton and Burkett, and Walter G. Burton, his attorneys, and presented to the Court his petition praying for a writ of error and super-

sedeas to a judgment of the Circuit Court of Mercer County rendered in this case on the 16th day of October, 1959, with the record therein accompanying the petition, and note of argument in support thereof, and note of argument by Sanders & Sanders, counsel for the defendant, in opposition to granting the writ of error, which being seen and inspected by the Court the writ of error and supersedeas prayed for is refused.

A true copy.

Attest: KENNETH E. HINES
Clerk Supreme Court of Appeals